

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Public Safety and Homeland Security Bureau)	PS Docket No. 06-229
Seeks Comment on Bay Area Petition for Waiver)	
of Deadline for Entering Into 700 MHz)	
Spectrum Lease)	

**COMMENTS OF THE
PUBLIC SAFETY SPECTRUM TRUST CORPORATION**

The Public Safety Spectrum Trust Corporation (“PSST”) hereby submits these Comments in response to the January 10, 2012 *Public Notice* of the Public Safety and Homeland Security Bureau (“PSHSB”) in the above-referenced proceeding.¹ The *Public Notice* seeks comment on a Petition for Waiver filed by the City and County of San Francisco, the City of Oakland, and the City of San Jose (“Bay Area Cities”),² in which the Bay Area Cities ask that the Federal Communications Commission (“Commission”): (1) nullify the existing early deployment spectrum lease between the San Francisco Bay Area Urban Area Region and the PSST; and (2) grant a waiver of the 60-day time frame for early deployment waiver recipients to enter into a spectrum lease with the PSST and allow a new lease to be executed between the Bay Area Cities and the PSST.³ If the waiver is granted, the Bay Area Cities have indicated that they will seek Commission and PSST consent to assign the new lease from the Bay Area Cities to the Bay Area

¹ *Public Safety and Homeland Security Bureau Seeks Comment on Bay Area Petition for Waiver of Deadline for Entering Into 700 MHz Spectrum Lease*, PS Docket No. 06-229, Public Notice, DA 12-32 (rel. Jan. 10, 2012) (“*Public Notice*”).

² *See* Waiver – Expedited Action Requested, filed by the City and County of San Francisco, the City of Oakland, and the City of San Jose, PS Docket No. 06-229 (filed Dec. 23, 2011) (“*Petition*”).

³ *Id.* at 1-2, 6.

Regional Interoperability Communications System Joint Powers Authority (“BayRICS Authority”).⁴

As discussed below, the PSST supports a grant of the *Petition*. Any grant, however, should harmonize any new lease with the other 20 early deployment leases, address issues related to the existing lease between the San Francisco Bay Area Urban Area Region and the PSST, ensure a seamless transition to any new lease, and minimize the additional financial impact of the *Petition* on the other waiver recipients or the PSST.

About the PSST. The PSST is a non-profit 501(c)(3) entity organized under the laws of the District of Columbia. The PSST has been selected by the Commission as the Public Safety Broadband Licensee for the 700 MHz public safety nationwide broadband spectrum. The PSST’s mission is to provide an organizational structure through which leaders and representatives of national public safety organizations, working with local operators, can guide the construction and operation of a nationwide, interoperable, public safety-grade wireless broadband network.⁵ The PSST also serves as the lessor for 21 long-term *de facto* transfer spectrum leases with local, regional, and state public safety entities planning early deployment operations on the 700 MHz public safety broadband spectrum, including the Bay Area Cities. As such, it has a direct interest in the Commission’s decision regarding the *Petition*.

⁴ *Id.* at 8.

⁵ The Board of Directors of the PSST consists of representatives of the following organizations: American Association of State Highway and Transportation Officials (AASHTO), American Hospital Association (AHA), Association of Public-Safety Communications Officials – International (APCO), Forestry Conservation Communications Association (FCCA), International Association of Chiefs of Police (IACP), International Association of Fire Chiefs (IAFC), International City/County Management Association (ICMA), International Municipal Signal Association (IMSA), National Association of State EMS Officials (NASEMSO), National Association of State 9-1-1 Administrators (NASNA), National Emergency Management Association (NEMA), National Emergency Number Association (NENA), National Fraternal Order of Police (NFOP), National Governors Association (NGA), and the National Sheriffs’ Association (NSA).

The PSST supports the *Petition*. The PSST supports the Bay Area Cities’ request to enter into a new long-term *de facto* transfer spectrum lease with the PSST that would encompass the Bay Area jurisdictions that intend to participate in the Bay Area Wireless Enhanced Broadband (“BayWEB”) project. As discussed in the *Petition*, a waiver grant is in the public interest and consistent with the Commission’s May 2010 *Waiver Order*.⁶ Specifically, it will enable the BayWEB jurisdictions “to immediately deploy a 700 MHz public safety broadband network after years of substantial planning and investment,”⁷ to the benefit of 7 million residents in the area.⁸ Denying the waiver request, on the other hand, would jeopardize a \$50.6 million Broadband Technology Opportunities Program grant, along with a \$21.9 million matching fund from Motorola.⁹ It would also delay the deployment of the BayWEB project and the delivery of interoperable voice and broadband data service for emergency responders in the area.¹⁰

As mentioned above, the Bay Area Cities have indicated that they will seek Commission and PSST consent to assign the new lease from the Bay Area Cities to the BayRICS Authority if the waiver is granted. The PSST supports having either the Bay Area Cities or the BayRICS Authority as the lessee and notes that if the BayRICS Authority becomes the lessee, it could serve as the single, authorized point of contact with the PSST for the BayWEB project. The PSST cautions, however, that any assignment would need to be made pursuant to the terms of the spectrum lease and subject to Commission and PSST approval.

⁶ *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Order, 25 FCC Rcd 5145 (2010) (“*Waiver Order*”).

⁷ *Petition* at iii; see also *Petition* at 12-13.

⁸ *Id.* at 15.

⁹ *Id.* at 13-14.

¹⁰ *Id.* at 13-15.

Any grant of a new lease should seek to harmonize that lease with the other 20 early deployment spectrum leases. For example, any new lease should be modeled on the same Standard Lease used for the other 20 existing leases and generally include the same terms and conditions. In addition, to reduce administrative burdens on the PSHSB and the PSST, the end date of the lease term and applicable deadlines (*e.g.*, lease administrative fee and quarterly report deadlines) of any new lease should be adjusted to remain consistent with the term and deadlines applicable to the other 19 lessees that obtained relief under the *Waiver Order*.

If the PSHSB grants the *Petition*, it should address issues related to the existing lease with the San Francisco Bay Area Urban Area Region and ensure a simple, seamless transition to any new lease. On September 2, 2010, the PSHSB approved a long-term *de facto* transfer spectrum lease between the San Francisco Bay Area Urban Area Region and the PSST.¹¹ Since that time, the PSHSB, PSST, early deployment waiver recipients, and other third parties have been interacting with the Bay Area pursuant to that existing lease as if the lease was valid. For example, Bay Area representatives have submitted administrative lease fees to the PSST for both years of the spectrum lease (for which the first year of fees have already been expended), attended calls and meetings with the other waiver recipients, and filed quarterly reports with the PSHSB.

To the extent that a new lease is necessary, the new lease should recognize all of the actions that have been taken to date under the existing lease. In addition, any new lessee should assume all of the existing obligations of the current lessee, such as reporting and fee payment deadlines and the lease term end date. As discussed above, these deadlines should be

¹¹ *Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Public Notice, 25 FCC Rcd 12673 (2010).

harmonized with the deadlines applicable to the other 19 lessees that obtained relief under the *Waiver Order*. To achieve this seamless transition, the PSHSB will need to examine, for example, whether it is appropriate to nullify the existing lease with the San Francisco Bay Area Urban Area Region in light of the activity taken pursuant to the lease and the *Waiver Order*, or whether an alternative approach such as termination would be preferable.

Finally, the PSHSB should minimize the additional financial impact of the *Petition* on the other waiver recipients and the PSST. The PSST notes that its administrative budget for the second year of the early deployment spectrum leases did not contemplate the replacement of a lease or the assignment of a lease to a new party. Such activities could create significant legal and administrative expenses for the PSST, depending on the particular relief granted. Any substantial expenses resulting from a grant of the *Petition* could potentially result in the PSST needing to seek additional lease administrative fees from the existing waiver recipients (upon PSHSB approval). Therefore, the PSST requests that the PSHSB seek to minimize any financial burden incurred by the PSST in response to the *Petition* and grant the PSST the ability to seek reimbursement, if necessary, from the Bay Area Cities, BayWEB jurisdictions, or BayRICS Authority (as appropriate) for expenses related to the implementation of any relief provided in response to the *Petition*.

Conclusion. The PSHSB should grant the *Petition* and facilitate early broadband deployment across the BayWEB jurisdictions. As part of the grant, it should address issues related to the existing lease between the San Francisco Bay Area Urban Area Region and the PSST and harmonize any new lease with the other existing early deployment leases. It should also minimize any financial burden incurred by the PSST and the other waiver recipients and

enable the PSST to seek reimbursement, if necessary, for expenses incurred in implementing a grant of the *Petition*.

Respectfully submitted,



Chief Harlin R. McEwen
Chairman
Public Safety Spectrum Trust Corporation
3221 M Street, NW
Washington, DC 20007
607-227-1664
chiefhrm@pubsaf.com

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